

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAZZ PHARMACEUTICALS, INC.,) [REDACTED]
)
Plaintiff,)
) C.A. No. 21-691(MN)
v.)
)
AVADEL CNS PHARMACEUTICALS, LLC,)
)
Defendant.)

Wednesday, April 6, 2022
10:00 a.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE MARYELLEN NOREIKA
United States District Court Judge

APPEARANCES:

MORRIS NICHOLS ARSHT & TUNNELL LLP
BY: SARAH SIMONETTI, ESQ.

-and-

QUINN EMANUEL URQUHART & SULLIVAN, LLP
BY: F. DOMINIC CERRITO, ESQ.
BY: GABRIEL P. BRIER, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2
3 McCARTER & ENGLISH, LLP
4 BY: DANIEL M. SIVER, ESQ.

5 -and-

6 LATHAM & WATKINS, LLP
7 BY: KENNETH G. SCHULER, ESQ.
8 BY: MARC N. ZUBICK, ESQ.

9
10 Counsel for the Defendant

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Good morning, counsel. Who is there, please?

MS. SIMONETTI: Good morning, this is Sara Simonetti from Morris Nichols for plaintiff.

THE COURT: Do you have anyone on the line with you?

MS. SIMONETTI: I do. I have Nic Cerrito and Gabriel Brier from Quinn Emanuel. And Mr. Cerrito will be handling the discussion today.

THE COURT: All right. Thank you.

MR. SILVER: Good morning, Your Honor. It's Dan Silver from McCarter & English on behalf of Avadel. And I am joined by Ken Schuler and Marc Zubick from Latham & Watkins in Chicago.

THE COURT: Anyone else on the line? Okay.

1 So I got your stipulation and I think it's okay.
2 The problem I'm having is I don't have any time frame here,
3 so when you say, you know, Avadel agrees to extend the date,
4 that's great unless of course the preliminary injunction is
5 going to be filed on, you know, [REDACTED] or [REDACTED]. So
6 what's the plan here?

7 MR. CERRITO: Your Honor, this is Nick Cerrito
8 from Quinn Emanuel on behalf of the plaintiff. I think that
9 this was put out at the [REDACTED] our from the [REDACTED] time,
10 [REDACTED] That [REDACTED] essentially
11 comprises the [REDACTED] they have said publicly it will
12 take them to get out and set up their system. So that [REDACTED]
13 [REDACTED] is really a well meant [REDACTED] [REDACTED] if you will, so
14 [REDACTED] [REDACTED] from whenever they get approval is the earliest
15 they could launch regardless. We don't see that as being
16 imminent, not sure why this was necessary, but I think
17 that's where the [REDACTED] [REDACTED] date came from.

18 THE COURT: All right.

19 MR. SCHULER: Your Honor, this is Ken Schuler.
20 I think our intent --

21 THE COURT: I'm sorry, could you hold on one
22 second?

23 MR. SCHULER: Yes.

24 THE COURT: All right. Sorry. Go ahead,
25 Mr. Schuler. Apologies.

1 MR. SCHULER: No problem, Your Honor.

2 So I believe that's addressed by the last
3 sentence of paragraph 7 which indicates that if the
4 circumstances warrant we will discuss and confer with Jazz
5 and/or the Court with regard to --

6 THE COURT: Yeah, but that's not good enough,
7 saying that you'll talk to me about it, not that you agree
8 to it, that's not going to work for me. That's my problem.
9 You're saying whether Avadel agrees to extend doesn't really
10 help me.

11 MR. SCHULER: Well, you know, definitely, Your
12 Honor, I agree with Mr. Cerrito in the sense that there will
13 be a period of time after approval where my client will have
14 to roll out the restricted access program and enroll
15 physicians and other health care providers. There will be
16 some period of time, I can't guarantee that it's exactly
17 [REDACTED] but I know that there will be a [REDACTED]
18 after approval where just as a matter of preparation and
19 enrolling health care providers, et cetera, so my point is
20 there will be some time, I just can't guarantee that it's
21 [REDACTED]. But we'll certainly work in good faith
22 to provide the Court with ample opportunity to evaluate a
23 motion should Jazz decide to file it.

24 THE COURT: Okay. That also is not terribly
25 helpful to me. I get it, but I can't sign this as it's

1 written. That's my problem. So I don't know what to do.

2 Mr. Cerrito, you're the one who is bringing the
3 motion. What do you want me to do? I'm not going to sign
4 this because this could say that they file a motion

5 [REDACTED] and they say well tough, we're not getting off the
6 market, or we're not going to agree to get off the market
7 and force me to deal with something in [REDACTED]. So I
8 can't do that. And you're the ones who are going to be at
9 risk if they decide to launch, so what do you want me to do?

10 MR. CERRITO: Quite frankly to be honest it was
11 Avadel that was pressing for this to begin with. [REDACTED]

12 [REDACTED] and -- sorry, there is some feedback going on.

13 [REDACTED]. We got a communication with the agency
14 provided by Avadel a couple of days ago, and I'll quote from
15 it. "[REDACTED]"
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]"

24 That is among other reasons why we never -- we
25 didn't understand what this was all about. I could

1 certainly speculate, including the fact that they had an
2 investor call a couple of days after this went to the Court
3 and talked about it, and they wanted to tell their investor
4 it's something on the schedule, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 As far as this document, that's not additive,
9 Your Honor.

10 THE COURT: All right. Mr. Schuler, it doesn't
11 seem like plaintiff cares, so why -- I mean, I don't know
12 quite what to do. All I can tell you is if you guys get
13 approval and you decide that you want to launch within [REDACTED]
14 [REDACTED] or so, there is going to be an issue if I don't have
15 time to file or a PI when I can have had notice of this. So
16 I don't know quite what to do here.

17 MR. SCHULER: I certainly appreciate that, Your
18 Honor. What I guess I'm hearing from counsel for Jazz is
19 that they don't believe there is a reason to plan for
20 orderly proceedings. I think that from our perspective and
21 based on your prior communications with us with regard to
22 the possibility of a PI when the date was coming up that
23 from all perspectives it would be better to have it as an
24 orderly process rather than as an emergency process.

25 So I guess what I would say is I don't want to

1 hear after approval that there is somehow an emergency
2 [REDACTED]

3 [REDACTED] I guess
4 that leaves the ball in Jazz's court.

5 I will ask Your Honor to seal the transcript, by
6 the way. Mr. Cerrito was quoting from a document that's
7 highly confidential from my client's perspective.

8 MR. CERRITO: I apologize. I certainly agree
9 with that. And I apologize for not saying that.

10 THE COURT: I will allow you to seal it, but you
11 need to get together and redact out the confidential parts
12 so the rest of it is not sealed.

13 So this is what we're going to do. I am not
14 going to order this stipulation because I am not entirely
15 convinced that it's necessary. Jazz, if you want to file a
16 PI when you hear, you better do it really fast, like before
17 a week is up. The briefing, absent agreement here, the
18 briefing is going to be on the normal schedule for briefing,
19 so fourteen days and seven days. And then I'll take a look
20 at the papers. And Avadel, you know, either I'll decide the
21 motion or if I can't decide the motion in time, I'll come
22 and talk to you and then I guess if I can't decide it in
23 time, you guys can make your own strategic decisions. But I
24 think that's where we're just going to have to leave it.

25 Anything further that you guys want to add to

1 | that?

2 MR. CERRITO: Not from plaintiff, Your Honor.

3 MR. SCHULER: Not from Avadel, Your Honor.

4 THE COURT: All right. Thanks everyone. Enjoy
5 the rest of the week.

6 (Teleconference concluded at 10:11 a.m.)

I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Dale C. Hawkins
Official Court Reporter
U.S. District Court